

## **BILL ANALYSIS**

Senate Research Center

H.B. 236  
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Criminal Justice  
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Enrolled

### **DIGEST AND PURPOSE**

In 1989, the United States Supreme Court decided in *Penry v. Lynaugh* that executing people who have mental retardation does not constitute cruel and unusual punishment. The decision did, however, provide for jury instructions to incorporate evidence of mental retardation as a possible mitigating factor in the imposition of the death penalty. Although the United States Supreme Court has not outlawed the execution of persons with mental retardation, there is some concern among Texans that the execution of these persons is unjust because persons with mental retardation may be less culpable for their crimes or may not have the capacity to understand the consequences of their actions. H.B. 236 enables a defendant in a capital case to request a hearing regarding whether the court shall appoint disinterested experts to determine if a defendant is a person with mental retardation and requires the court to sentence a defendant found by a jury to be a person with mental retardation to confinement in the institutional division of the Texas Department of Criminal Justice for life.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the court of criminal appeals in SECTION 1 (Article 46B.05, Code of Criminal Procedure) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Part I, Code of Criminal Procedure, by adding Chapter 46B, as follows:

#### **CHAPTER 46B. CAPITAL CASE: EFFECT OF MENTAL RETARDATION**

Art. 46B.01. DEFINITION. Defines "mental retardation."

Art. 46B.02. RESTRICTION ON DEATH PENALTY. Prohibits a defendant convicted of a capital offense who is determined under this chapter to be a person with mental retardation from being sentenced to death, notwithstanding Section 19.03, Penal Code.

Art. 46B.03. INTENT TO RAISE MENTAL RETARDATION AS ISSUE. Authorizes a defendant in a capital case to request the submission of a special issue under Section 2(e) (2), Article 37.071, only if the defendant files a notice of intent to request the submission with the court and the attorney representing the state not later than the 30th day before the date the trial commences.

Art. 46B.04. HEARING. Requires the court, on receiving a notice under Article 46B.02 of the defendant's intent to request the submission of a special issue, to hold a hearing to determine whether to appoint disinterested experts to examine the defendant to determine whether the defendant is a person with mental retardation. Requires the court, if the court finds that the defendant has presented sufficient evidence to justify the appointment of experts, to appoint disinterested experts experienced and qualified in the field of diagnosing mental retardation to examine the defendant and determine whether the defendant is a person with mental retardation. Requires the court to order the defendant to submit to an examination by experts appointed under this article.

Art. 46B.05. APPEAL. Provides that the defendant and the state are entitled to appeal a finding of a court described by Article 46B.04(d). Requires the court of criminal appeals to

adopt rules as necessary for the administration of the appeals process established by this article. Provides that an appeal under this article is a direct appeal to the court of criminal appeals, and the court of criminal appeals is required, as provided by court rule, to give priority to the review of an appeal under this article over other cases before the court.

SECTION 2. Amends Article 37.071, Section 2(a), Code of Criminal Procedure, to authorize a defendant who has been convicted of a capital offense or the defendant's counsel to present evidence during the sentencing phase of a trial that the court deems relevant to sentencing, including evidence as to whether the defendant is a person with mental retardation. Prohibits the court, the attorney representing the state, the defendant, or the defendant's counsel from informing a juror or a prospective juror of the effect of a failure of a jury to agree on issues submitted under Subsection (b) or (e), rather than Subsection (c) or (e) of this article.

SECTION 3. Amends Article 37.071, Section 2(e), Code of Criminal Procedure, to require a court, on the written request of the attorney representing the defendant, to instruct the jury that if the jury returns an affirmative finding to each issue submitted under Subsection (b), the jury is required to answer whether the defendant is a person with mental retardation, if raised by evidence existing in reports of disinterested experts prepared under Article 46B.03(b). Requires the court, on the written request of the attorney representing the defendant, to instruct the jury that if the jury answers that a circumstance or circumstances warrant that a sentence of life imprisonment rather than a death sentence be imposed or answers that the defendant is a person with mental retardation, the court will sentence the defendant to imprisonment in the institutional division of the Texas Department of Criminal Justice (TDCJ) for life.

SECTION 4. Amends Article 37.071, Section 2(f), Code of Criminal Procedure, to require a court to charge the jury that in answering an issue submitted under Subsection (e), the jury is required to consider mitigating evidence to be evidence that a juror might regard as reducing the defendant's moral blameworthiness, in respect to the issue submitted under Subsection (e) (2).

SECTION 5. Amends Article 37.071, Section 2(g), Code of Criminal Procedure, to require the court to sentence the defendant to death, if the jury returns an affirmative finding on each issue submitted under Subsection (b) and a negative finding on each, rather than an, issue submitted under Subsection (e). Requires the court to sentence the defendant to confinement in the institutional division of TDCJ for life, if the jury returns a negative finding on any issue submitted under Subsection (b) or an affirmative finding on any, rather than an, issue submitted under Subsection (e) or is unable to answer any issue submitted under Subsection (b) or (c).

SECTION 6. Makes application of this Act prospective.

SECTION 7. Effective date: September 1, 2001.